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Order 2000-6-4



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Served: June 9, 2000

Issued by the Department of Transportation
on the 6th day of June, 2000

Application of

SMOKEY BAY AIR, INC.

for a certificate of public convenience and necessity
under 49 U.S.C. 41102 to engage in interstate scheduled
air transportation of persons, property, and mail

Docket OST-99-6150 - 9

FINAL ORDER

By Order 2000-4-7, issued April 10, 2000, we directed all interested persons to show cause why we should not make final our tentative findings and conclusions stated in it and award a certificate of public convenience and necessity to Smokey Bay Air, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property, and mail. Interested persons were given 14 days to file objections to the order.

On April 26, 2000, Arctic Transportation Services, Inc. (ATS), an operating certificated air carrier based in Anchorage, filed an objection to Order 2000-4-7.¹ In its objection, ATS contends that Smokey Bay (1) is in violation of its current on-demand operating authority issued by the Federal Aviation Administration and the Department by conducting more than five scheduled flights per week between two points and thus has not demonstrated an adequate compliance disposition; (2) has not demonstrated its managerial fitness since ATS believes that the FAA will not allow Ms. Claire McCann to hold the combined positions of Chief Pilot, Director of Maintenance, and Director of Operations once Smokey Bay receives its scheduled passenger authority; and (3) has not presented an accurate projection of its expenses and thus may not have the necessary financial resources to meet the Department's financial fitness criteria.

On May 3, Smokey Bay filed a reply to ATS' answer. Smokey Bay argues that it is not operating outside the parameters of its FAA authority. Specifically, it indicates that it currently conducts 50 to 60 flights per week to several villages in Kackemak Bay, Alaska, but that none of those flights are scheduled. Smokey Bay indicates that when it receives its requested certificate authority, it plans to offer three to four round-trip flights per week not three to four round trip flights per day as was stated in Order 2000-4-7.

¹ No other objections to Order 2000-4-7 were received.

Regarding ATS' argument that the FAA would not likely grant Smokey Bay a deviation from section 119.69 to allow Ms. Claire McCann to hold combined managerial positions, Smokey Bay states that it has already received FAA approval to allow Ms. McCann to hold these multiple positions even with scheduled authority.

With respect to ATS' argument that Smokey Bay has not presented an accurate projection of its expenses, Smokey Bay contends that it has already identified the costs involved in providing its proposed certificate operations and those costs were considered reasonable in Order 2000-4-7. Smokey Bay further contends that it projects profitably during 2000 and that it does not plan any large fixed asset purchases and has ample cash flow to cover all expenses and operations.

Upon review of the objections raised by ATS, we find that these issues are similar to those raised in Order 2000-4-7 and, therefore, have already been considered and addressed. Further, the FAA has advised us that Smokey Bay's current operations with respect to safety and compliance have been satisfactory; that its current operations are, in fact, on-demand and not scheduled; and that it has approved Ms. McCann to hold multiple positions as long as the carrier maintains a three pilot/three aircraft operation. In addition, according to financial statements submitted by Smokey Bay in its initial application, the carrier's internal resources are enough to enable the carrier to support its limited additional scheduled service. In this regard, as noted in Order 2000-4-7, Smokey Bay has positive stockholders' equity of \$143,000 that would allow it to borrow additional funds if needed to support its operations. Under these circumstances, we find nothing new in the allegations raised by ATS that would lead us to conclude that Smokey Bay is not fit to conduct its proposed limited certificated air carrier operations.

ACCORDINGLY,

1. We find that Smokey Bay Air, Inc., is fit, willing, and able to engage in interstate scheduled air transportation of persons, property, and mail, using no more than three aircraft with no more than nine passenger seats each.
2. We issue a certificate of public convenience and necessity to Smokey Bay Air, Inc., to engage in interstate scheduled air transportation of persons, property, and mail in the form and subject to the Terms, Conditions, and Limitations attached.

3. We direct Smokey Bay Air, Inc., to submit to the Air Carrier Fitness Division a first year progress report within 45 days following the end of its first year of certificated flight operations.²

4. We will serve a copy of this order on the persons listed in Attachment A.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

² The report shall include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current senior management and key technical personnel.



Certificate of Public Convenience and Necessity for Interstate Air Transportation

This Certifies That

SMOKEY BAY AIR, INC.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

*Issued by Order 2000-6-4
On June 6, 2000
Effective on (see attached)*

*A. Bradley Mims
Deputy Assistant Secretary for
Aviation and International Affairs*



Terms, Conditions, and Limitations

SMOKEY BAY AIR, INC.

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the operations proposed under this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder may not operate aircraft designed to have a maximum passenger capacity of more than nine seats. In the event that the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.

(4) *The holder may not operate more than three aircraft. In the event that the holder wishes to conduct operations utilizing more than three aircraft, it must first be determined fit for such operations.*

(5) *The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*

(6) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA.*

(7) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*

(8) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.*

(9) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*

(a) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*

(b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*

(10) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*

(11) *In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.*

SMOKEY BAY AIR, INC.

Attachment A

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